

## § 2638.705

## 5 CFR Ch. XVI (1–1–16 Edition)

direct and immediate communication between the qualified instructor and the employees receiving the training. Even though the qualified instructor is not physically located in the room where the training occurs, the qualified instructor is available.

*Example 2 to paragraph (d):* The agency described in the preceding example provides videotaped training instead of training through a video conference link. The employees viewing the videotape are provided with a telephone at the training site and the telephone number of a qualified instructor who is standing by during and immediately after the training to answer any questions. Under these circumstances, a qualified instructor is available.

*Example 3 to paragraph (d):* In the preceding example, if no telephone had been provided at the training site or if a qualified instructor was not standing by to respond to any questions raised, there would not be a qualified instructor available. Merely providing the phone number of the qualified instructor would not satisfy the requirement that a qualified instructor be available.

(e) *Exceptions.* Verbal training without a qualified instructor available or written training prepared by a qualified instructor will satisfy the verbal training requirement for a public filer (or group of public filers) if one hour of official duty time is provided for the training and:

(1) The designated agency ethics official (or his or her designee) makes a written determination that it would be impractical to provide verbal training with a qualified instructor available; or

(2) The employee is a special Government employee.

*Example to paragraph (e)(1):* The only public filer in the American Embassy in Ulan Bator, Mongolia is the Ambassador. Because of the difference in time zones and the uncertainty of the Ambassador's schedule, the designated agency ethics official for the State Department is justified in making a written determination that it would be impractical to provide the Ambassador with verbal training. In this case, the Ambassador may receive written training prepared by a qualified instructor.

### § 2638.705 Annual ethics training for other employees.

(a) *Covered employees.* Each calendar year, agencies must train the following employees:

(1) Employees appointed by the President;

(2) Employees of the Executive Office of the President;

(3) Employees defined as confidential filers in 5 CFR 2634.904;

(4) Employees designated by their agency under 5 CFR 2634.601(b) to file confidential financial disclosure reports;

(5) Contracting officers, as defined in 41 U.S.C. 423(f)(5); and

(6) Other employees designated by the head of the agency or his or her designee based on their official duties.

NOTE TO PARAGRAPH (a): Employees described above who are also public filers must receive ethics training as provided in § 2638.704.

(b) *Content of training.* The requirements for the contents of annual training are the same as the requirements in § 2638.704(b).

(c) *Length and presentation of training.* The training for covered employees must consist of:

(1) A minimum of one hour of official duty time for verbal training at least once every three years. The verbal training must be presented by a qualified instructor or prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape; and

(2) An amount of official duty time the agency determines is sufficient for written training in the years in which the employee does not receive verbal training. The written training must be prepared by a qualified instructor. The employee's initial ethics orientation may satisfy the written training requirement for the same calendar year.

(d) *Exceptions.* Written ethics training prepared by a qualified instructor will satisfy the verbal training requirement for a covered employee (or group of covered employees) if sufficient official duty time is provided for the training and:

(1) The designated agency ethics official (or his or her designee) makes a written determination that verbal training would be impractical;

(2) The employee is a special Government employee expected to work 60 or fewer days in a calendar year;

(3) The employee is an officer in the uniformed services serving on active duty for 30 or fewer consecutive days; or

## Office of Government Ethics

## § 2640.101

(4) The employee is designated under paragraph (a)(6) of this section to receive training.

### § 2638.706 Agency's written plan for annual ethics training.

(a) The designated agency ethics official (or his or her designee) is responsible for directing the agency's ethics training program. The designated agency ethics official (or his or her designee) must develop a written plan each year for the agency's annual training program.

(b) The written plan must be completed by the beginning of each calendar year.

(c) The written plan must contain:

(1) A brief description of the agency's annual training.

(2) Estimates of the number of employees who will receive verbal training according to the following table:

| Employees who will receive verbal training | Number |
|--|--------|
| (i) Public filers.                         |        |
| (ii) Employees other than public filers.   |        |

(3) An estimate of the number of employees who will receive written training according to the following table:

| Employees who will receive written training  | Number |
|--|--------|
| Employees other than public filers who will receive training under § 2638.705(c)(2). |        |

(4) Estimates of the number of employees who will receive written training instead of verbal training according to the following table:

| Employees who will receive written training instead of verbal training                      | Number |
|---|--------|
| (i) Public filers who qualify for the exception in § 2638.704(e)(1).                        |        |
| (ii) Public filers who qualify for the exception in § 2638.704(e)(2).                       |        |
| (iii) Employees other than public filers who qualify for the exception in § 2638.705(d)(1). |        |
| (iv) Employees other than public filers who qualify for the exception in § 2638.705(d)(2).  |        |
| (v) Employees other than public filers who qualify for the exception in § 2638.705(d)(3).   |        |
| (vi) Employees other than public filers who qualify for the exception in § 2638.705(d)(4).  |        |

(d) The written plan may contain any other information that the designated agency ethics official believes will assist the Office of Government Ethics in reviewing the agency's training program.

## PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

### Subpart A—General Provisions

Sec.

2640.101 Purpose.

2640.102 Definitions.

2640.103 Prohibition.

### Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans.

2640.202 Exemptions for interests in securities.

2640.203 Miscellaneous exemptions.

2640.204 Prohibited financial interests.

2640.205 Employee responsibility.

2640.206 Existing agency exemptions.

### Subpart C—Individual Waivers

2640.301 Waivers issued pursuant to 18 U.S.C. 208(b)(1).

2640.302 Waivers issued pursuant to 18 U.S.C. 208(b)(3).

2640.303 Consultation and notification regarding waivers.

2640.304 Public availability of agency waivers.

AUTHORITY: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

SOURCE: 61 FR 66841, Dec. 18, 1996, unless otherwise noted.

### Subpart A—General Provisions

#### § 2640.101 Purpose.

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he has a personal financial interest, or in which certain persons or organizations with which he is affiliated have a financial interest. The statute is intended to prevent an employee from allowing personal interests to affect his official actions, and to